

Pretrial Deadlines and Instructions Before the Honorable Judith C. Herrera

PLEASE NOTE:

- 1) Throughout these instructions, the term “trial” refers to commencement of the trailing docket. Therefore, all dates operate off of the initial jury selection date or date upon which the trailing docket begins, whichever is sooner. **Counsel must seek leave of Court in the form of a written motion to extend any pretrial deadlines.**
- 2) Where a submission deadline falls on a weekend or a federal holiday, the deadline will be the next working day after the weekend or holiday.

Event	Deadline	Comment
PERTAINING TO CIVIL		
Witness Identification	Fifteen (15) working days before trial	Witnesses shall be identified in accordance with the Pretrial Order but, in any event, no later than fifteen (15) working days before trial.
Exchange of Exhibits	Fifteen (15) working days before trial	Exhibits shall be marked and identified prior to trial, with plaintiff's exhibits identified on yellow labels by number and defendant exhibit's identified on blue labels by letter.
Objections to Exhibits	Ten (10) working days before trial	You should specify the Rule of Evidence or other legal authority upon which your objection is based. In most cases, the Court will consider objections and admit exhibits prior to trial.
Motions in <i>Limine</i> and Other Admissibility Issues	Fifteen (15) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made prior to the dispositive motions deadline as set forth in the Scheduling Order; that is, <i>Daubert</i> motions are to be fully briefed no later than the date designated as the dispositive motion deadline.
Responses to Motions in <i>Limine</i> and Other Admissibility Issues	Eight (8) working days before trial	
Witness and Exhibit Lists	Five (5) working days before trial	<p>Complete lists of witnesses to be called at trial with a brief summary of their testimony are to be filed. The order of the witnesses is not binding, but known witnesses not listed in accordance with this procedure will not be allowed to testify.</p> <p>The following shall be filed on the docket by the deadline referenced herein: (a) a consolidated exhibit list identifying all exhibits the parties have stipulated to be admissible; (b) a consolidated exhibit list identifying all exhibits the parties have stipulated to be authentic, but to which there are other objections; and (c) a separate contested exhibit list for those exhibits on which the parties could not reach a stipulation.</p>

PERTAINING TO CIVIL (Cont'd)		
Statement of the Case	Five (5) working days before trial	The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection.
Expert Reports	In accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure	When calling an expert witness, it is the responsibility of counsel to establish his/her qualifications to express an opinion under Rule 702, after which counsel must move for his/her acceptance by the court as an expert. In that connection, counsel must inform the Court of the particular field in which counsel offers the witness as an expert. As in other areas, cumulative expert testimony will not be permitted.
Depositions	Fifteen (15) working days before trial	Notify opposing counsel and the court of such intended use of deposition. If a deposition is used in part, counsel shall highlight the parts to be used for the Court. Plaintiff will use a yellow marker and defendant a blue marker. This does not apply to cross-examination or rebuttal.
Deposition Objections	Ten (10) working days before trial	Opposing counsel shall file with the Clerk objections to any deposition.
Memoranda of Law	Five (5) working days before trial	Trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes are encouraged and should be filed with the Clerk.
Non-Jury Trials - Findings of Fact	Ten (10) working days before trial	Findings of fact and conclusions of law shall be filed with the Clerk, with references to exhibits and proposed testimony. Each party shall also email the proposed findings and conclusions Word format to herreraproposedtext@nmd.uscourts.gov

Event	Deadline	Comment
PERTAINING TO CIVIL AND CRIMINAL TRIALS		
Jury Instructions	Ten (10) working days before trial	Please refer to the attached "Preparation of Jury Instructions."
Proposed Voir Dire	Five (5) working days before trial	In the average case, each counsel will be permitted ten (10) minutes to voir dire the venire panel. Do not argue the case or cite legal principles in your voir dire. Requested voir dire shall be exchanged between counsel and submitted to the Court by the deadline contained herein. If counsel cannot agree on proposed <i>voir dire</i> , any objections must be brought to the Court's attention at least two (2) working days prior to trial.
Objections to Voir Dire	Two (2) working days before trial	

PERTAINING TO CRIMINAL CASES		
Event	Deadline	Comment
Government's Notice of Rule 404(b) or 609(b) Evidence	Ten (10) working days before trial	Counsel will not raise possible areas of reversible error without prior Court approval, whether in presenting opening statements or questioning witnesses. (e.g., commenting on a defendant's silence, invoking constitutional rights, raising Rule 404(b), 608 or 609 material, etc.)
Motions in <i>Limine</i> and Other Admissibility Issues	Fifteen (15) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made prior to the dispositive motions deadline as set forth in the Scheduling Order; that is, <i>Daubert</i> motions are to be fully briefed no later than the date designated as the dispositive motion deadline.
Responses to Motions in <i>Limine</i> and Other Admissibility Issues	Eight (8) working days before trial	
Witness and Exhibit Lists	Five (5) working days before trial	It will facilitate an orderly and efficient trial for counsel to exchange witness and exhibit lists five (5) working days prior to trial so that evidentiary problems can be anticipated and resolved correctly. In the event this requirement poses a danger to potential witnesses or for other good cause, the parties should approach the Court to seek relief from this requirement prior to the deadline.
Motion(s) for Continuance	In accordance with 18 U.S.C. §3161(h)(7) Ten (10) working days before Call of Calendar Hearing	Motion(s) for continuance should be filed in accordance with 18 U.S.C. §3161(h)(7), specifically setting forth the factual grounds justifying the continuance.

PREPARATION OF JURY INSTRUCTIONS

Before the Honorable Judith C. Herrera

Prepare your proposed jury instructions in accordance with these directions:

- 1) File a numbered original set of instructions with citations on the docket. A copy should be emailed to herreraproposedtext@nmd.uscourts.gov in Word format. The instructions shall list authority at the bottom of each instruction (Fig. 1).
- 2) Email an unnumbered original set of instructions in Word format, without citations (Fig. 2) to herreraproposedtext@nmd.uscourts.gov.
- 3) Submit no more than one instruction per page.
- 4) Carefully proofread each instruction for errors in spelling, grammar, punctuation, citations, and for unintended deviations from pattern instructions used as sources.
- 5) Submit a cover sheet with the case caption on all sets of instructions.
- 6) In civil cases, if the New Mexico Uniform Jury Instructions are not applicable, Judge Herrera prefers that instructions, to the extent possible, follow the pattern jury instructions for the Fifth Circuit.

In criminal cases, use the Tenth Circuit pattern instructions.

Instruction No. _____
Members of the Jury:
<p>In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . .</p>
Citation . . .

Fig. 1: With Citation

Instruction No. _____
Members of the Jury:
<p>In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . .</p>

Fig. 2: Without Citation